

## SENATE BILL No. 453

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-6-8.

**Synopsis:** Property and casualty guaranty fund. Amends various provisions of the property and casualty insurance guaranty association law, including: (1) definitions; (2) board membership; (3) association obligations; (4) assessments; and (5) exhaustion of insurance policy benefits.

**Effective:** July 1, 2004.

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**Clark**

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January 12, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 453

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-6-8-4, AS AMENDED BY P.L.129-2003,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2004]: Sec. 4. As used in this chapter, unless otherwise  
4 provided:

5 (1) The term "account" means any one (1) of the three (3)  
6 accounts created by section 5 of this chapter.

7 (2) The term "association" means the Indiana Insurance Guaranty  
8 Association created by section 5 of this chapter.

9 (3) The term "commissioner" means the commissioner of  
10 insurance of this state.

11 (4) The term "covered claim" means ~~an unpaid~~ **a claim that has**  
12 **not been paid from any source and** which arises out of and is  
13 within the coverage and not in excess of the applicable limits of  
14 an insurance policy to which this chapter applies issued by an  
15 insurer, if the insurer becomes an insolvent insurer after the  
16 effective date (January 1, 1972) of this chapter and (a) the  
17 claimant or insured is a resident of this state at the time of the



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insured event or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall be limited as provided in section 7 of this chapter, and shall not include (1) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. However, a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a "covered claim" may be filed directly with the receiver or liquidator of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer; nor (2) any supplementary obligation including but not limited to adjustment fees and expenses, attorney fees and expenses, court costs, interest and bond premiums, whether arising as a policy benefit or otherwise, prior to the appointment of a liquidator; nor (3) any unpaid claim that is not both filed within one (1) year after an order of liquidation and permitted to share in liquidation distributions under IC 27-9-3-33 if the insolvent insurer is a domestic insurer or in accordance with the applicable provisions of the law of the state of domicile if the insolvent insurer is not a domestic insurer; nor (4) any claim by a person whose net worth at the time an insured event occurred was more than five million dollars (\$5,000,000); nor (5) a claim against a person insured by an insolvent insurer if the person's net worth at the time an insured event occurred was more than ~~fifty~~ **twenty-five** million dollars (~~\$50,000,000~~; **\$25,000,000**); nor (6) any claim by a person who directly or indirectly controls, is controlled, or is under common control with an insolvent insurer on December 31 of the year before the order of liquidation. All covered claims filed in the liquidation proceedings shall be referred immediately to the association by the liquidator for processing as provided in this chapter.

(5) The term "insolvent insurer" means (a) a member insurer holding a valid certificate of authority to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) against whom a final order of liquidation, with a finding of insolvency, to which there is no further right of appeal, has been entered by a court of competent jurisdiction in the company's state of domicile. "Insolvent insurer" shall not be construed to mean an insurer with respect to which an order, decree, judgment or finding of insolvency whether preliminary or

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temporary in nature or order to rehabilitation or conservation has been issued by any court of competent jurisdiction prior to January 1, 1972 or which is adjudicated to have been insolvent prior to that date.

(6) The term "member insurer" means any person who is licensed or holds a certificate of authority under IC 27-1-6-18 or IC 27-1-17-1 to transact in Indiana any kind of insurance for which coverage is provided under section 3 of this chapter, including the exchange of reciprocal or inter-insurance contracts. The term includes any insurer whose license or certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily surrendered. A "member insurer" does not include farm mutual insurance companies organized and operating pursuant to IC 27-5.1 other than a company to which IC 27-5.1-2-6 applies.

(7) The term "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct premiums written" does not include premiums on contracts between insurers or reinsurers.

(8) The term "person" means an individual ~~corporation, limited liability company, partnership, reciprocal or inter-insurance exchange, association, or voluntary organization~~; or a legal entity, including a governmental entity.

**(9) The term "self-insurer" means a person that covers the person's liability through a qualified individual or group self-insurance program or another formal program created for the specific purpose of covering liabilities typically covered by insurance.**

SECTION 2. IC 27-6-8-6, AS AMENDED BY P.L.268-1999, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) The board of directors of the association shall consist of nine (9) member insurers one (1) of whom shall be selected by or from among each of the following groups representative of member insurers, such selection to be subject to the approval of the commissioner:

- (1) One (1) person representing the American Insurance Association.
- (2) One (1) person representing the Alliance of American Insurers.
- (3) One (1) person representing the National Association of

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Independent Insurers.

(4) One (1) person representing the National Association of Mutual Insurance Companies.

(5) One (1) person representing the Insurance Institute of Indiana.

(6) Three (3) persons representing the:

(A) domestic stock companies; **or**

(B) domestic mutual companies; **or**

~~(C) domestic reciprocal insurers;~~

with not more than two (2) persons representing **any either** category.

(7) One (1) person representing independent unaffiliated stock, fire, and casualty companies to be appointed by the commissioner.

(b) Not more than one (1) member insurer in a group of insurers under the same management or ownership shall serve as a director at the same time.

(c) Directors shall serve such terms as shall be established in the plan of operation.

(d) Vacancies on the board shall, **to the extent possible**, be filled for the remaining period of the term in the same manner as the initial selection.

(e) If no directors are selected by March 1, 1972, the commissioner may appoint the initial members of the board of directors.

(f) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(g) Directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 3. IC 27-6-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) The association shall:

(i) Be obligated to the extent of the covered claims ~~as defined herein~~ existing at the time of the order of liquidation or arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if ~~he~~ **the insured** does so within thirty (30) days of the determination. This obligation shall include only that amount of each covered claim which is less than ~~one two hundred fifty thousand dollars (\$100,000); (\$250,000).~~ In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the applicable limits provided in the policy from which the claim arises, nor shall the association be obligated in an amount in excess of ~~three five~~ **three five** hundred thousand dollars (~~\$300,000~~)

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1 **(\$500,000)** per policy for all claims arising out of one (1) occurrence.  
 2 The return of unearned premium is limited to the lesser of eighty  
 3 percent (80%) of the paid but unearned premium or ~~six hundred fifty~~  
 4 ~~dollars (\$650) multiplied by the number of months or partial months~~  
 5 ~~remaining in the policy term; not to exceed twelve (12) months; ten~~  
 6 **thousand dollars (\$10,000) per policy.**

7 (1) In the case of claims arising from bodily injury, sickness, or  
 8 disease, including death resulting therefrom, except claims under  
 9 IC 22-3 or similar state or federal laws providing benefits for  
 10 occupational injury or disease, the amount for which the association  
 11 shall be obligated shall not exceed the claimant's reasonable expenses  
 12 incurred for necessary medical, surgical, x-ray, and dental services,  
 13 including prosthetic devices and necessary ambulance, hospital,  
 14 professional nursing, and funeral services, and any amounts actually  
 15 lost by reason of the claimant's inability to work and earn wages or  
 16 salary or their equivalent that would otherwise have been earned in the  
 17 normal course of such injured claimant's employment, to which may be  
 18 added at the discretion of the association a sum not to exceed one  
 19 thousand dollars (\$1,000) for all other costs and expenses incurred by  
 20 the claimant prior to the insolvency. In the case of a claim for wrongful  
 21 death, the foregoing obligation of the association shall, in addition to  
 22 the limits set forth above, be subject to the limitations provided by the  
 23 wrongful death statutes of the state. Such amounts which are legally  
 24 payable because of the death of a claimant shall be paid to the  
 25 claimant's estate, to the claimant's father or mother or guardian, to the  
 26 surviving spouse or children, or to the next of kin as set out in  
 27 IC 34-23-1 and IC 34-23-2.

28 The amount for which the association shall be obligated may also  
 29 include payments in fact made to others, not members of claimant's  
 30 household, which were reasonably incurred to obtain from such other  
 31 persons ordinary and necessary services for the production of income  
 32 in lieu of those services the claimant would have performed for himself  
 33 had he not been injured.

34 In the case of claims arising from bodily injury, sickness, or disease,  
 35 including those in which death results, under IC 22-3 or similar state  
 36 or federal laws providing benefits for occupational injury or disease,  
 37 the association is obligated only to the extent provided under IC 22-3.

38 (2) A third party having a covered claim against any insured of an  
 39 insolvent member insurer may file such claim in the liquidation  
 40 proceeding under IC 27-9-3 if such insolvent member insurer is a  
 41 domestic insurer and pursuant to the applicable provisions of law of the  
 42 state of domicile if such insolvent member insurer is not a domestic

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insurer. The liquidator shall immediately refer said claim to the association to process as provided in this chapter unless the claimant shall within thirty (30) days from the date of filing said claim in the liquidation proceeding, file with the commissioner as liquidator a written demand that said claim be processed in liquidation proceedings as a claim not covered by this chapter.

(ii) Be deemed the insurer to the extent of its obligation on the covered claims as limited by this chapter and to this extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. ~~including those relating to reinsurance contracts and treaties entered into by the insolvent insurer. However, the association's obligation to defend any insured of the insolvent insurer or to indemnify against the costs of such defense terminates as soon as the claimant or claimants have been paid all benefits that they are entitled to under this chapter. An obligation of the association to defend an insured on a covered claim ceases upon the association's payment, by settlement releasing the insured or on a judgement, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit or upon the association's tender of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limit to a claimant under this chapter.~~

(iii) Allocate claims paid and expenses incurred among the three (3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under paragraph (i) of this subsection subsequent to an insolvency, **repayment of funds borrowed under this paragraph (iii) or subsection (b)(iii),** the expenses of handling covered claims subsequent to an insolvency, the cost of examination under IC 27-6-8-12 and other expenses authorized by this chapter. The assessments of each member insurer shall be ~~on~~ a uniform percentage basis in the proportion that the net direct written premiums in this state of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. **of net direct written premium in the preceding calendar year on the kinds of insurance in the account. A member insurer may not be assessed in a year on an account an amount greater than one percent (1%) of the member insurer's net direct written premiums in Indiana for the preceding calendar year on the kinds of insurance in the account. However, the assessment to each member insurer in the account must initially be**

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1 based on the written premium of each member insurer as shown in  
 2 the latest year's annual financial statement on file with the  
 3 commissioner. The initial assessment must be adjusted by applying  
 4 the same rate of assessment as initially used to each member  
 5 insurer's written premium as shown on the annual statement for  
 6 the year preceding the year of the assessment. The difference  
 7 between the initial assessment and the adjusted assessment must be  
 8 charged or credited to each member insurer by the association as  
 9 soon as practical after the filing of the annual statements of the  
 10 member insurers with the commissioner for the year on which the  
 11 adjusted assessment is based. In the case of an insurer that is a  
 12 member insurer when the initial assessment is made and that pays  
 13 the initial assessment, but is not a member insurer at the time of  
 14 the adjusted assessment by reason of the insurer's insolvency or  
 15 withdrawal from the state and surrender of the insurer's certificate  
 16 of authority, credit resulting from the adjustment accruing to the  
 17 insurer must be refunded to the insurer by the association.

18 However, in addition to the pro rata assessments already described,  
 19 an assessment may be made against each member insurer in a stated  
 20 amount up to fifty dollars (\$50) per year for the purpose of paying the  
 21 administrative expenses of the association. **Unless otherwise**  
 22 **authorized under this section**, there shall be no assessment for any  
 23 account so long as assets held in such account are sufficient to cover all  
 24 estimated payments for liquidation in process under such described in  
 25 **this paragraph (iii) for the account.**

26 Each member insurer shall be notified of the assessment not later  
 27 than thirty (30) days before it is due. ~~No member insurer may be~~  
 28 ~~assessed in any year on any account an amount greater than one percent~~  
 29 ~~(1%) of that member insurer's net direct written premiums in this state~~  
 30 ~~for the preceding calendar year on the kinds of insurance in the~~  
 31 ~~account. If the maximum assessment, together with the other assets~~  
 32 ~~of the fund in an account, does not provide in any one (1) year in an~~  
 33 ~~account an amount sufficient to make necessary payments from the~~  
 34 ~~account, each member insurer must be assessed the additional~~  
 35 ~~amount that is necessary to make the necessary payments from the~~  
 36 ~~underfunded account from the other two (2) accounts, subject to~~  
 37 ~~the same limitation of one percent (1%) of the member insurer's~~  
 38 ~~net direct written premiums for the calendar year preceding the~~  
 39 ~~assessment on the kinds of insurance in the account. The additional~~  
 40 ~~assessments must be considered loans by and between the separate~~  
 41 ~~accounts. Amounts borrowed under this subsection must be repaid~~  
 42 ~~to the account from which the amounts were borrowed, out of~~

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assets, including existing and future assessments in the account receiving the loan. An interest charge must be levied on all amounts borrowed under this subsection based on the average prime rate of interest for each year the money remains unpaid. If the amounts borrowed remain unpaid on the seventh anniversary of the loan to the underfunded account as a result of the inability of the borrowing account to make repayment, the amount borrowed and interest that is not repaid, beginning with the principle and interest of the first year, is considered uncollectible. If the maximum assessment, together with the other assets of the association in any account and amounts assessed from other accounts, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders by a company whose assessment has been deferred. A deferred assessment shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies whose assessments were increased as the result of such deferment, or at the option of any such company, shall be credited to future assessments against such company.

(iv) Investigate, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases, and judgments may be properly contested, and as appropriate to contest them.

(v) Notify such persons as the commissioner directs under IC 27-6-8-9(b)(i).

(vi) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(vii) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility

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while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter. Any unreimbursed obligation of the association to a member insurer designated a servicing facility shall constitute an admitted asset of such member insurer.

(viii) Be entitled to and permitted to examine all claims, files, and records of an insolvent insurer at such times and to such extent as necessary or appropriate to obtain information regarding covered claims individually and in the aggregate, and to establish such procedures as appropriate to obtain prompt notice of all covered claims and information pertaining thereto during the course of liquidation.

(b) The association may:

(i) Appear in, defend, and appeal any action on a covered claim but it shall have no obligation to pay any amount in excess of the provisions of IC 27-6-8-7.

(ii) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(iii) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(iv) Sue or be sued.

(v) Negotiate and become a party to any contracts as are necessary to carry out the purpose of this chapter.

(vi) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(vii) Refund to the then member insurers in proportion to the contribution of each such member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of the calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that the association may retain as a reserve fund from the excess of the assets over liabilities at the end of any calendar year an amount ~~not to exceed ten percent (10%) of such excess assets of such account.~~ **considered reasonable by the board of directors in light of anticipated future obligations of the association. Association money may not be considered part of the state general fund and may not be used for any purpose except for the payment of the debts, claims, obligations, and liabilities of the association.** Any such reserve fund or earnings from its investment shall be used only for the payment of covered claims and authorized association expenses. Upon appropriate action by the board of directors such reserve fund shall be refunded to the then member insurers in proportion to the total

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1 contribution of each such member insurer to such account.

2 SECTION 4. IC 27-6-8-11 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) **For purposes**  
4 **of this section, "claim under an insurance policy" includes:**

5 **(1) a claim against a health maintenance organization, a**  
6 **hospital plan corporation, or a professional health service**  
7 **corporation; and**

8 **(2) an amount payable by or on behalf of a self-insurer.**

9 **(b) Any person having a claim against an insurer under any**  
10 **provision in an insurance policy, other than a policy of an insolvent**  
11 **insurer which is also a covered claim, shall be required to exhaust first**  
12 **the person's right under the policy. Any amount payable on a covered**  
13 **claim under this chapter shall be reduced by the amount of recovery**  
14 **under regardless of whether the insurance policy is issued by a**  
15 **member insurer or is the kind of insurance to which this chapter**  
16 **applies under section 3 of this chapter, that arises from the same**  
17 **facts, injury, or loss that gives rise to a covered claim against the**  
18 **association, shall exhaust all coverage under the insurance policy**  
19 **before filing a claim against the association. An amount payable on**  
20 **a covered claim under this chapter must be reduced by the full**  
21 **applicable limits stated in the insurance policy and the association**  
22 **must receive a full credit for the stated limits, or if there are no**  
23 **applicable limits, the covered claim must be reduced by the total**  
24 **recovery.**

25 **(c) Notwithstanding subsection (b), a person is not required to**  
26 **exhaust any right under the policy of an insolvent insurer as**  
27 **follows:**

28 **(1) A claim under an insurance policy that provides liability**  
29 **coverage to a person who may be:**

30 **(A) jointly and severally liable; or**

31 **(B) a joint tortfeasor;**

32 **with the person covered under a policy of an insolvent insurer**  
33 **is considered to be a claim arising from the same facts, injury,**  
34 **or loss that gave rise to the covered claim against the**  
35 **association.**

36 **(2) The liability:**

37 **(A) of a person insured under an insurance policy of an**  
38 **insolvent insurer; and**

39 **(B) for a covered claim;**

40 **must be reduced by the same amount by which the**  
41 **association's obligation is reduced under this section.**

42 ~~(b)~~ **(d) Any person having a claim which may be recovered under**

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1 more than one (1) insurance guaranty association or its equivalent shall  
2 seek recovery first from the association of the place of residence of the  
3 insured except that if it is a first party claim for damage to property  
4 with a permanent location, the person shall seek recovery first from the  
5 association of the location of the property, and if it is a worker's  
6 compensation claim, the person shall seek recovery first from the  
7 association of the residence of the claimant. Any recovery under this  
8 chapter shall be reduced by the amount of recovery from any other  
9 insurance guaranty association or its equivalent.

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